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8 **BEFORE THE**
9 **PHYSICIAN ASSISTANT BOARD**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 950-2020-002817

13 **ASHKHAN NICHOLAS KAVIANI, P.A.**
14 **3421 Mary Ann St.**
15 **La Crescenta, CA 91214-2537**

ACCUSATION

16 **Physician Assistant License No. PA 51300,**

17 Respondent.

18 **PARTIES**

19 1. Rozana Khan (Complainant) brings this Accusation solely in her official capacity as
20 the Executive Officer of the Physician Assistant Board, Department of Consumer Affairs (Board).

21 2. On or about November 13, 2013, the Physician Assistant Board issued Physician
22 Assistant License Number PA 51300 to Ashkhan Nicholas Kaviani, P.A. (Respondent). The
23 Physician Assistant License was in full force and effect at all times relevant to the charges
brought herein and will expire on October 31, 2023, unless renewed.

24 **JURISDICTION**

25 3. This Accusation is brought before the Board, under the authority of the following
26 laws. All section references are to the Business and Professions Code (Code) unless otherwise
27 indicated.

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1 4. Section 3504.1 of the Code makes public protection the highest priority of the
2 Physician Assistant Board.

3 5. Section 3527 of the Code states:

4 (a) The board may order the denial of an application for, or the issuance subject
5 to terms and conditions of, or the suspension or revocation of, or the imposition of
6 probationary conditions upon a PA license after a hearing as required in Section 3528
7 for unprofessional conduct that includes, but is not limited to, a violation of this
chapter, a violation of the Medical Practice Act, or a violation of the regulations
adopted by the board or the Medical Board of California.

8 ...

9 (e) The board may order the licensee to pay the costs of monitoring the
probationary conditions imposed on the license.

10 ...

11 6. Section 3528 of the Code states:

12 Any proceedings involving the denial, suspension, or revocation of the
13 application for licensure or the license of a PA or the application for approval or the
14 approval of an approved program under this chapter shall be conducted in accordance
with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of
the Government Code.

15 7. Section 2227 of the Code states:

16 (a) A licensee whose matter has been heard by an administrative law judge of
17 the Medical Quality Hearing Panel as designated in Section 11371 of the Government
18 Code, or whose default has been entered, and who is found guilty, or who has entered
into a stipulation for disciplinary action with the board, may, in accordance with the
provisions of this chapter:

19 (1) Have his or her license revoked upon order of the board.

20 (2) Have his or her right to practice suspended for a period not to exceed one
21 year upon order of the board.

22 (3) Be placed on probation and be required to pay the costs of probation
monitoring upon order of the board.

23 (4) Be publicly reprimanded by the board. The public reprimand may include
24 a requirement that the licensee complete relevant educational courses approved by
the board.

25 (5) Have any other action taken in relation to discipline as part of an order of
26 probation, as the board or an administrative law judge may deem proper.

27 (b) Any matter heard pursuant to subdivision (a), except for warning letters,
28 medical review or advisory conferences, professional competency examinations,
continuing education activities, and cost reimbursement associated therewith that are
agreed to with the board and successfully completed by the licensee, or other matters

made confidential or privileged by existing law, is deemed public, and shall be made available to the public by the board pursuant to Section 803.1.

STATUTORY PROVISIONS

8. Section 2234 of the Code states, in pertinent part

The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.

...

(e) The commission of any act involving dishonesty or corruption that is substantially related to the qualifications, functions, or duties of a physician and surgeon.

(f) Any action or conduct that would have warranted the denial of a certificate.

...

9. Unprofessional conduct under section 2234 of the Code is conduct which breaches the rules or ethical code of the medical profession, or conduct which is unbecoming a member in good standing of the medical profession and which demonstrates an unfitness to practice medicine. (*Shea v. Bd. of Medical Examiners* (1978) 81 Cal.App. 3d 564, 575.)

10. Section 2236 of the Code states, in pertinent part:

The conviction of any offense substantially related to the qualifications, functions, or duties of a physician and surgeon constitutes unprofessional conduct within the meaning of this chapter [Chapter 5, the Medical Practice Act]. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred.

...

(d) A plea or verdict of guilty or a conviction after a plea of nolo contendere is deemed to be a conviction within the meaning of this section and Section 2236.1. The record of conviction shall be conclusive evidence of the fact that the conviction occurred.

11. Section 3531 of the Code states:

A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge of a felony or of any offense which is substantially related to the qualifications, functions, or duties of the business or profession to which the license was issued is deemed to be a

conviction within the meaning of this chapter. The board may order the license suspended or revoked, or shall decline to issue a license when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

REGULATORY PROVISIONS

12. California Code of Regulations, title 16, section 1399.521 states:

In addition to the grounds set forth in section 3527, subdivision (a), of the Code, the board may deny, issue subject to terms and conditions, suspend, revoke or place on probation a physician assistant for the following causes: (a) Any violation of the State Medical Practice Act which would constitute unprofessional conduct for a physician and surgeon. (b) Using fraud or deception in passing an examination administered or approved by the board. (c) Practicing as a physician assistant under a physician who has been prohibited by the Medical Board of California or the Osteopathic Medical Board of California from supervising physician assistants. (d) Performing medical tasks which exceed the scope of practice of a physician assistant as prescribed in these regulations.

13. California Code of Regulations, title 16, section 1399.525, states:

For the purposes of the denial, suspension or revocation of a license pursuant to division 1.5 (commencing with section 475) of the code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a person holding a license under the Physician Assistant Practice Act if to a substantial degree it evidences present or potential unfitness of a person holding such a license to perform the functions authorized by the license in a manner consistent with the public health, safety or welfare. Such crimes or acts shall include, but are not limited to, the following:

(a) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of the Medical Practice Act.

(b) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of the Physician Assistant Practice Act.

(c) A conviction of child abuse.

(d) Conviction as a sex offender.

(e) Any crime or act involving the sale, gift, administration, or furnishing of narcotics or dangerous drugs or dangerous devices, as defined in Section 4022 of the

code.

(f) Conviction for assault and/or battery.

(g) Conviction of a crime involving lewd conduct.

(h) Conviction of a crime involving fiscal dishonesty.

(i) Conviction for driving under the influence of drugs or alcohol.

COST RECOVERY

14. Section 125.3 of the Code states, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FACTUAL ALLEGATIONS

15. On or about April 11, 2020, at approximately 5:11 p.m., a police officer with the Glendale Police Department observed respondent make an illegal unsafe left turn from a Vons parking lot onto Foothill Boulevard, in violation of Vehicle Code section 21461, subdivision (a)[failure to obey a traffic sign]. Respondent did not obey the posted right turn only sign. Furthermore, as Respondent pulled into the traffic lanes, he did not wait for another vehicle traveling westbound on Foothill Boulevard to pass his vehicle, and that westbound vehicle had to suddenly apply their brakes to avoid a broadside collision, in violation of Vehicle Code section 21801, subdivision (a)[failure to yield the right of way]. The officer then conducted a traffic stop of Respondent's vehicle.

16. Upon contacting Respondent, the police officer observed that Respondent's eyes were bloodshot and watery. He also immediately smelled a strong odor of alcohol coming from Respondent's person when he walked up to Respondent's driver's side door window. He asked Respondent what happened regarding his turn, and Respondent stated that he was very sorry and just trying to deliver milk to his mother. Respondent also admitted to the police officer that he had consumed alcohol that day, i.e., Respondent admitted that he had a drink "hours earlier." During this interaction, the police officer could smell the odor of alcohol emitting from Respondent's breath and could hear that Respondent's speech was slurred and observed that his

1 eyes were bloodshot and watery. Based on the above information the police officer conducted
2 further investigation.

3 17. The police officer asked Respondent how much alcohol he had consumed.
4 Respondent replied by initially stating that he had consumed two mixed drinks, but later stated
5 “two beers.” The police officer then asked Respondent whether he had the two mixed drinks with
6 the two beers so it would be four drinks in total, and Respondent stated, “sure.” He explained that
7 the beers were 12 ounce cans of “White Claw” (a flavored hard seltzer alcoholic beverage), and
8 that the mixed drinks were vodka and orange juice. He further stated that he had consumed the
9 vodka and orange juice drinks earlier at approximately 0130 hours, and that he had consumed the
10 White Claw beverages after he woke up at approximately 0900 hours. Respondent would not
11 answer an inquiry about when he stopped drinking.

12 18. The police officer then administered several field sobriety tests (FSTs) to Respondent.
13 During the FSTs, Respondent exhibited signs of impairment. The police officer then placed
14 Respondent under arrest for suspicion of violating Vehicle Code section 23152, subdivisions
15 (a)/(b)(driving while under the influence).

16 19. Respondent underwent preliminary alcohol screening tests. The results revealed a
17 blood alcohol concentration of 0.227%.

18 20. On or about July 6, 2020 in the case entitled, *The People of the State of California v.*
19 *Ashkhan Nicholas Kaviani*, Los Angeles County Superior Court Case No. 0GD01891, wherein
20 Respondent was charged with a violation of Vehicle Code section 23152, subdivision (a) [driving
21 while under the influence](Count 1) and section 23152, subdivision (b) [driving while under the
22 influence of alcohol of .08 or more](Count 2), and an enhancement under Vehicle Code section
23 23538, subdivision (b)(2)[having a blood alcohol concentration that was 0.20 percent or more, by
24 weight during the commission of the violation of Vehicle Code Section 23152].

25 21. On or about October 13, 2021, the Superior Court convicted Respondent upon his
26 plea of nolo contendere to Count 2, and placed him on thirty-six (36) months’ probation with
27 terms and conditions, including, commitment in county jail for three (3) days, with credit for time
28 served, and being ordered to pay fines, fees, penalties, assessments and restitution, and ordered to

1 attend an alcohol program. The remaining count was dismissed by the Superior Court.

2 **FIRST CAUSE FOR DISCIPLINE**

3 **(Conviction of a Crime)**

4 22. Respondent has subjected his Physician Assistant License to disciplinary action under
5 sections 3527, 2227, and 2234, as defined by section 3531 of the Code and California Code of
6 Regulations, title 16, section 1399.525, in that he has been convicted of a crime, substantially
7 related to the qualifications, functions, or duties of a Physician Assistant, as more particularly
8 alleged hereinafter:

9 23. Complainant refers to and, by this reference, incorporates paragraphs 15 through 21
10 inclusive, above, as though set forth fully herein.

11 24. Respondent's conduct and his criminal conviction for driving under the influence of
12 alcohol is substantially related to the practice of his profession pursuant to Title 16 of California
13 Code of Regulations section 1399.525, subdivision (c)(9).

14 **SECOND CAUSE FOR DISCIPLINE**

15 **(Dangerous Use of Alcohol)**

16 25. Respondent has further subjected his Physician Assistant License to disciplinary
17 action under sections 3527, 2227 and 2234, as defined by section 2239, subdivision (a), of the
18 Code, in that he used alcoholic beverages, to the extent, or in such a manner, as to be dangerous
19 or injurious to himself, others, or the public. The circumstances are as follows:

20 26. The allegations of the First Cause for Discipline are incorporated herein by reference
21 as if fully set forth.

22 **THIRD CAUSE FOR DISCIPLINE**

23 **(General Unprofessional Conduct)**

24 27. Respondent is subject to disciplinary action under sections 3527 and 2234 of the
25 Code, generally, in that he committed unprofessional conduct. The circumstances are as follows:

26 28. The allegations of the First and Second Causes for Discipline are incorporated herein
27 by reference as if fully set forth.

28 / / /

1 **DISCIPLINARY CONSIDERATIONS**

2 29. To determine the degree of discipline, if any, to be imposed on Respondent,
3 Complainant alleges that, in another disciplinary action titled *In the Matter of Application of*
4 *Ashkhan Nicholas Kaviani, P.A.*, Case No. 1E-2013-233863, the Board issued a Decision,
5 effective October 25, 2013 (Decision), which issued a probationary Physician Assistant License
6 to Respondent with terms and conditions, which included a three (3) year term of probation with
7 terms and conditions, including biological fluid testing, psychological evaluation and treatment
8 and on-site supervision, among other things, for suffering two criminal convictions, namely, a
9 2009 violation of Vehicle Code section 23152, subdivision (b) (driving under the influence) and a
10 2010 violation of Penal Code section 415(2) (disturbing the peace). The Decision is now final
11 and is incorporated by reference as if fully set forth.

12 30. The circumstances surrounding Respondent's 2009 DUI conviction are as follows:
13 On or about December 20, 2008, in Pasadena, California, as part of a DUI checkpoint operation, a
14 police officer conducted a traffic stop of Respondent's vehicle while he was attempting to make
15 an illegal U-turn in the middle of the road just in front of the posted DUI checkpoint in an evident
16 attempt to evade it. While speaking with the Respondent, the officer noted objective signs of
17 intoxication, including red, watery eyes, slurred speech, and an odor of alcohol coming from
18 Respondent. Respondent also failed to successfully perform field sobriety tests as directed. He
19 admitted that he had been drinking earlier and had consumed three beers. Respondent was
20 arrested for driving under the influence. He consented to a blood test, and the results of the test
21 revealed that he had a blood alcohol concentration of 0.26 percent. On or about August 21, 2009,
22 Respondent pleaded no contest to violating Vehicle Code section 23152, subdivision (b).

23 **PRAYER**

24 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
25 and that following the hearing, the Physician Assistant Board issue a decision:

- 26 1. Revoking or suspending Physician Assistant License Number PA 51300, issued to
27 Ashkhan Nicholas Kaviani, P.A.;
- 28 2. Ordering Ashkhan Nicholas Kaviani, P.A. to pay the Physician Assistant Board the

1 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
2 Professions Code section 125.3;

3 3. Ordering Respondent Ashkhan Nicholas Kaviani, P.A., if placed on probation, to pay
4 the Physician Assistant Board the cost of probation monitoring; and

5 4. Taking such other and further action as deemed necessary and proper.

6
7 DATED: April 27, 2023

Rozana Khan

ROZANA KHAN
Executive Officer
Physician Assistant Board
Department of Consumer Affairs
State of California
Complainant

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